DATO' PAHLAWAN RAMLI YUSUFF
v. TETUAN VIN LAW & CO

HIGH COURT MALAYA, KUALA LUMPUR
ALIZA SULAIMAN J
[APPEAL NO: WA-12BNCvC-60-05-2024]
30 MAY 2025

Abstract – *(i) A party who participates in a court proceeding without objecting to the court's jurisdiction is estopped from raising a jurisdictional challenge on appeal. The submission to jurisdiction implies consent to the court's authority; (ii) Under proviso (a) to s. 121(1) of the Legal Profession Act 1976, a client's request for a detailed bill can render a previously delivered gross sum bill 'null and void'. The omission to issue an allocatur certificate under O. 59 r. 7(4) of the Rules of Court 2012 does not invalidate a court order for taxation of costs. A higher court can order the issuance of the certificate on appeal. There is no statutory or legal requirement for a law firm to notify a client in writing that it is retracting a gross sum bill in favour of a detailed itemised bill, nor is there a requirement to seek leave of the court to do so.*

COURTS: *Sessions Court – Jurisdiction – Sessions Court Judge heard taxation of bill of costs – Whether seized with jurisdiction to hear – Whether party who participates in court proceeding without objecting to jurisdiction estopped from challenging it on appeal*

LEGAL PROFESSION: *Bill of costs – Taxation – Gross sum bill – Client's request for detailed bill – Whether rendered previous gross sum bill 'null and void' under s. 121(1) of Legal Profession Act 1976 – Whether law firm required to give written notice to client that it was retracting gross sum bill in favour of detailed bill – Whether omission to issue allocatur certificate under O. 59 r. 7(4) of Rules of Court 2012 invalidated taxation order*

The respondent was a law firm appointed by the appellant to represent him in a civil suit and its related appeals ('proceedings'). According to the respondent, the appellant did not make any payment for the legal services rendered. This led to the filing of originating summons ('Suit 103') by the respondent, against the appellant, at the Sessions Court where the former sought an order that the Registrar was directed and given the power to tax an invoice received by the respondent ('encl. 1'). Enclosure 1 was allowed and this was affirmed by the High Court. The respondent then filed 'notis penetapan kos' to commence taxation proceedings ('encl. 25') ('Suit 103'). Subsequently, another Sessions Court Judge ('SCJ') taxed the respondent's bill of costs, in the sum of RM259,355 and costs of RM10,000 to be paid

by the appellant to the respondent. Hence, the present appeal which concerned two main grounds, namely: (i) the jurisdictional issue on whether the SCJ had the jurisdiction to hear the taxation of the bill of costs; and (ii) whether the SCJ had erred, in fact and in law, in deciding that by way of the appellant's letter to the respondent ('letter dated 27 November 2017'), the appellant had requested for 'a bill containing detailed items' within the meaning of proviso (a) in s. 121(1) of the Legal Profession Act 1976 ('LPA').

Held (dismissing appeal):

(1a) During the hearing of encl. 25, witnesses were called to give evidence. From the notes of proceedings, the appellant had complied with all directions by the SCJ in preparation of the hearing and he submitted to the jurisdiction of the SCJ by participating in the hearing. No objection was raised by the appellant as to the SCJ's jurisdiction to tax the bill of costs. The appellant was therefore estopped from raising this issue in this appeal. (para 20)

(1b) The SCJ did not tax the bill of cost by way of the OS in encl. 1. The parties were well aware that after the High Court had dismissed the appellant's appeal against the decision of the SCJ in respect of encl. 1, case managements were held for encl. 25. Suit 103 was to be heard *viva voce* as applied for by the respondent and agreed by the appellant. Based on the SCJ's grounds of judgment, the SCJ was evidently deciding on encl. 25. Further, a failure or omission to issue an allocatur certificate, as provided under O. 59 r. 7(4) of the Rules of Court 2012 ('ROC'), cannot annul the order made by the SCJ. This court was empowered to order an allocatur certificate to be issued by the Registrar, pursuant to O. 59 r. 7(4) of the ROC, upon the payment of the allocatur fee. (para 24)

(2a) Upon receiving the 27 November 2017 letter on 11 January 2018, the respondent replied to the appellant on the same date to the effect, *inter alia*, that the previous gross sum bill for works done at the High Court was rendered null and void. The appellant did not reply to the respondent's letter dated 11 January 2018 to request for clarification, to state his objection or to put across his position on the matter. Therefore, proviso (a) in s. 121(1) of the LPA applied in full force and, by the appellant's request by way of the 27 November 2017 letter, the gross bill for the sum of RM100,000 no longer had any effect. (para 34)

(2b) The respondent did not deliver an itemised bill of costs but instead elected to bill a lump sum fee. By not writing to the appellant and putting him on notice that it was retracting the earlier choice of billing, the respondent failed to give the right to the appellant to oppose the respondent's choice of billing. (para 34)

(2c) As for the rest of the appellant's contentions, he had not shown any statutory provision or legal requirement that the respondent: (i) must write to the appellant and put him on notice that the respondent was retracting the gross sum bill and opting for a bill containing detailed items; and (ii) apply for leave of the court before it could retract the choice for a gross sum bill in substitution for a detailed bill. There was no provision in O. 59 of the ROC for the award of costs in the sum of RM10,000 by the SCJ. The said award had enriched the respondent. (para 34)

Case(s) referred to:

Adsigns Imej Sdn Bhd v. Yayasan Selangor [2011] 3 CLJ 652 HC ***(refd)***
Alsop v. Oxford (Lord) [1833] 1 My & K 564 ***(refd)***
Amsiah Rahim v. Borneo Samudera Sdn Bhd [2024] 9 CLJ 210 CA ***(refd)***
Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***
Dato' Pahlawan Ramli Yusuff v. Tan Sri Abdul Gani Patail & Ors [2014] 9 CLJ 489 HC ***(refd)***
Gooi Hock Seng v. Chuah Guat Khim [2001] 1 CLJ 583 SC ***(refd)***
Ng Hoo Kui & Anor v. Wendy Tan Lee Peng, Administrator Of The Estates Of Tan Ewe Kwang, Deceased & Ors [2020] 10 CLJ 1 FC ***(refd)***
Siew Kuen Williams v. Yong Siew In [1984] 1 CLJ 41; [1984] 2 CLJ (Rep) 450 HC ***(refd)***
Tan Kok Cheng & Sons Realty Co Sdn Bhd v. Lim Ah Pat [1996] 1 CLJ 231 FC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 29
Legal Profession Act 1976, s. 121(1)(a)
Rules of Court 2012, O. 55 r. 2, O. 59 rr. 7(4), 12
Rules of the High Court 1980, O. 59

Other source(s) referred to:

Malaysian Court Practice High Court, Vol 1, p 3941
Tan Yock Lin, *The Law Of Advocates & Solicitors in Singapore and West Malaysia,* 2nd edn, Butterworths Asia, 1998, pp 677, 678

For the appellant - Kamalanathan Ratnam, Vinod R Kamalanathan & Muhammad Azim Akif Saiful Bahri; M/s Vinod Kamalanathan & Assocs
For the respondent - David Mathews, Alicia Goh Ai Chen & Tan Jing Yi; M/s KP Lu & Tan

[Editor's note: Appeal from Sessions Court; Civil Suit No: WA-A54-103-12-2020.]

Reported by Najib Tamby

JUDGMENT

Aliza Sulaiman J:

Introduction

[1] This was an appeal by the appellant against the decision of the learned Session Court Judge ('SCJ') on 15 May 2024 in allowing the respondent's bill of costs in the sum of RM259,355 and costs of RM10,000 to be paid by the appellant to the respondent.

[2] Appeals against any decision on the taxation of a bill of costs is a rarity in this court. The present appeal is not the run-of-the-mill appeals against the decision on the total costs allowed by the Registrar after a bill of costs is taxed. Rather, this appeal is believed to have raised a novel issue on jurisdiction, namely, whether in the circumstances of the case, the SCJ has the jurisdiction to hear the taxation of the respondent's bill of costs.

[3] After having considered the record of appeal and the submissions of the parties, I had dismissed the appellant's appeal. The order made by the SCJ was affirmed with a further order that the allocatur certificate is to be issued for the taxation of the bill of costs in the sum of RM259,355 and costs of RM10,000, which was ordered to be paid by the appellant to the respondent.

[4] The appellant is dissatisfied with my decision. Broad grounds were given on the date of decision, *ie*, 28 March 2025. These are my full grounds of judgment.

Salient Facts

[5] The respondent is a law firm and was appointed by the appellant to represent him in the following civil suit and the related appeal and application in the apex court:

(i) Kuala Lumpur High Court Civil Suit No: 21NCvC-72-11-2013 between the appellant and Tan Sri Abdul Gani bin Patail & 11 Ors ('Suit 72');

(ii) Court of Appeal Civil Appeal No: W-01(1M)(NCvC)-137-04-2014 between Tan Sri Abdul Gani bin Patail & 11 Ors and the appellant; and

(iii) Federal Court Civil Application No: 08-191-04-2015 between Tan Sri Abdul Gani bin Patail & 11 Ors and the appellant

(hereinafter referred to collectively as the "said proceedings"; see *Dato' Pahlawan Ramli Yusuff v. Tan Sri Abdul Gani Patail & Ors* [2014] 9 CLJ 489; [2015] 7 MLJ 763).

[6] The fact as regards the appointment of the respondent by the appellant and that the former had rendered legal services until its discharge in 2017 is not in dispute.

[7] The respondent alleged that the appellant did not make any payment for the legal services. A series of letters were sent by the respondent to the appellant demanding for demand but to no avail. This led to the filing of originating summons ('OS') No: WA-A54-103-12-2020 ('Suit 103') in the Kuala Lumpur Sessions Court on 9 December 2020 (encl. 1) where the respondent prayed for, among others, an order that the Registrar is directed and given the power to tax invoice no. HS-010-2019 ('said invoice'), which was received by the respondent.

[8] On 21 May 2021, the SCJ allowed the respondent's application in encl. 1 of Suit 103. The appellant filed a notice of appeal against the SCJ's decision. On 21 February 2022, the High Court dismissed the appeal.

[9] The respondent had filed the "notis penetapan kos" on 23 July 2021 to commence taxation proceedings (encl. 25 in Suit 103).

[10] Subsequently, another SCJ taxed the respondent's bill of costs which resulted in the decision as mentioned at the start of this judgment and against which this appeal was brought to this court. Specifically, the SCJ allowed the sum of RM250,000 as "kos penyediaan (Perkara A bil kos)" and RM9,355 as "kos perbelanjaan (Perkara B bil kos)". The SCJ ordered that the total sum of RM259,355.00 is to be paid immediately by the appellant to the respondent. Apart from costs of RM10,000, the appellant was also ordered to pay interest at the rate of 5% per annum on the sum of RM259,355 from 15 May 2024 until full settlement.

[11] In the memorandum of appeal dated 18 June 2024 ('MoA'), the appellant had listed 15 grounds of appeal. However, based on the written submissions filed in this court and the oral submission on the date of hearing, the crux of the appeal concerns two main grounds as follows:

(i) the jurisdictional issue on whether the SCJ has jurisdiction to hear the taxation of the bill of costs; and

(ii) whether the SCJ had erred in fact and law in deciding that, *vide* the appellant's letter to the respondent dated 27 November 2017 ('27 November 2017 letter'), the appellant had requested for "a bill containing detailed items" within the meaning of proviso (a) in sub-s. 121(1) of the Legal Profession Act 1976 (Act 166) ('LPA 1976').

The Legal Principles

[12] All civil appeals from a subordinate court shall be by way of re-hearing (see s. 29 of the Courts of Judicature Act 1964 (Act 91) and O. 55, r. 2 of the Rules of Court 2012 ('RC 2012')).

[13] The respondent drew the attention of this court to the judgment by Abdul Malek Ahmad FCJ, in delivering the decision of the Supreme Court in *Gooi Hock Seng v. Chuah Guat Khim* [2001] 1 CLJ 583, where the learned judge referred to the judgment of Sir John Leach MR in *Alsop v. Oxford (Lord)* [1833] 1 My & K 564 as follows:

> Generally speaking, the decision of the master on taxation is final: he is the sole judge of the fact, whether the business has been done, and of the proper charge to be made for it; and it is further his duty to inquire whether the business was required to be done; for, if the solicitor negligently or ignorantly takes any unnecessary proceedings, it is the duty of the master to protect the client from any charge in respect of such proceedings. The court will only interfere where the master acts upon some mistaken principle.

[14] His Lordship also referred to p. 3941 of the *Malaysian Court Practice High Court*, Vol. 1 wherein it is stated, among others, that:

> The judge should not interfere unless there is an error of principle or some other material error: *Diversey (Far East) Pte Ltd v. Chester Chei Chung Ching & Ors. (No 2)* above, or unless the Registrar has made an obvious mistake, or has exercised his discretion capriciously or mischievously: *Corbett v. Ipoh Tin Dredging Ltd* [1936] MLJ 278.

[15] Ultimately, the court held that "In practice the court will only interfere with the exercise of the taxing officer's discretion if it is clear that he has gone wrong in principle; and for that reason, matters of quantum only, where no principle is involved, are rarely interfered with; but where a question of principle is involved and if it can be shown that the taxing officer has erred in principle, the court will exercise its own discretion".

[16] Basically, this court should not intervene with the decision of the SCJ unless it is shown to be plainly wrong (see the decision of the Federal Court in *Ng Hoo Kui & Anor v. Wendy Tan Lee Peng, Administrator Of The Estates Of Tan Ewe Kwang, Deceased & Ors* [2020] 10 CLJ 1; [2020] 12 MLJ 67).

Analysis And Findings Of The Court

First Ground: Whether The SCJ Has Jurisdiction To Hear The Taxation Of The Bill Of Costs

[17] The appellant submitted that the SCJ granted an order which she had no authority to do in that it was made out of jurisdiction, and relying on the decision in *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75; [1998] 1 MLJ 393, this renders the order as an illegal order which should be set aside *in limine*.

[18] The basis for the appellant's contention was that:

(i) prayer 1 in the OS (encl. 1 in Suit 103) reads "bahawa Pendaftar Mahkamah … diarahkan dan diberikuasa untuk menaksirkan invois terperinci plaintif, Invois No. HS-010-2019 yang diterima oleh defendan ("bil kos tersebut")". Prayer 1 was one of the prayers which were allowed by the SCJ in the order dated 21 May 2021 and the order has not been set aside; and

(ii) the SCJ had proceeded to dispose the taxation of the bill of costs by considering the said invoice, which was enclosed to the respondent's letter to the appellant dated 16 December 2019, when the bill of costs (encl. 25 in Suit 103) had already been filed and must therefore go through the process pursuant to O. 59, r. 12 of the RC 2012. The relevant part of the said provision for present purposes reads as follows:

(1) Subject to Order 59, rule 7, the Registrar shall have the power to determine – A

(a) the costs of or arising out of any cause or matter in the Court;

…

(2) An application under this rule shall be in Form 117A. B

Order 59, r. 7 of the RC 2012 provides that:

Stage of proceedings at which costs are to be dealt with (O. 59, r. 7)

7. (1) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings; and any costs ordered shall be paid at the conclusion of the proceedings unless the Court otherwise orders. C

(2) At the conclusion of the proceedings, the Court will hear submissions from the parties as to the quantum of costs to be awarded and shall order such costs as it deems fit. The Court shall direct that the submissions of the parties on costs are to be tendered as part of the substantive submission of the case or separately and there shall be annexed to the submission of costs a bill for such costs which shall be in Form 117, and shall include particulars of the following: D

(a) work done including the value of getting up; and

(b) all disbursements reasonably incurred. E

(3) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and in the case of any proceedings transferred or removed to the High Court from any other Court, the costs of the whole proceedings, both before and after the transfer or removal, may be dealt with by the Court to which the proceedings are transferred or removed. F

(4) Where under paragraph (2) costs are determined in respect of proceedings in the High Court an allocatur certificate shall be issued by the Registrar upon payment of an allocatur fee equivalent to four per centum of the costs or at such rate as the Chief Justice may from time to time determined. G

The heading for Form 117A in the RC 2012 is "Notice Of Taxation By Registrar" and it sets out the date and time on which the Registrar has appointed to tax the bill of cost. H

Hence, the Registrar has the jurisdiction to tax the Bill of Costs, and not the SCJ. By proceeding to tax the Bill of Costs, the SCJ had usurped the jurisdiction of the Registrar (see too, paragraph 13 of the MoA).

[19] Firstly, a jurisdictional issue can be raised at any stage of the proceedings (see *Badiaddin*'s case, *supra*). Hence the appellant is not prevented from raising, as one his grounds of appeal, that the SCJ had no jurisdiction to hear the taxation of the bill of costs. I

[20] Secondly, it is observed that, on 21 and 22 February 2024, a hearing of the "notis penetapan kos" (encl. 25 in Suit 103) was held where witnesses were called to give evidence. From the notes of proceedings ('NoP'), the appellant had complied with all directions by the SCJ in preparation of the hearing and he submitted to the jurisdiction of the SCJ by participating in the hearing. No objection was raised by the appellant as to the SCJ's jurisdiction to tax the bill of costs. In the appellant's reply submission (encl. 82), it was argued that the respondent had, in error, sought the taxation of costs before the SCJ and that "the appellant's solicitor ought to have objected to the same, perhaps both parties had overlooked the error of lack of jurisdiction of the Sessions Court Judge to make the said order". In this regard, I accept the respondent's submission that the appellant is estopped from raising this issue in this appeal.

[21] The appellant relied on the case of *Tan Kok Cheng & Sons Realty Co Sdn Bhd v. Lim Ah Pat* [1996] 1 CLJ 231; [1995] 3 MLJ 273 for the proposition that, both parties, even by consent, cannot confer jurisdiction on a court to hear a matter when clearly that court has no jurisdiction to hear it.

[22] Even if I am found to be wrong in my finding on the operation of the legal principle of estoppel, nevertheless a judge is empowered to assess costs under O. 59 of the RC 2012. Based on the research by learned counsels, the single case authority on point is *Adsigns Imej Sdn Bhd v. Yayasan Selangor* [2011] 3 CLJ 652; [2011] MLJU 139 where, on the issue of costs, the High Court expressed the following opinion on O. 59 of the Rules of the High Court 1980:

> In my view if the rules of court has provided for a fixed costs then the fixed costs is what the parties may claim and is not a subject matter of taxation and/or allocatur unless the rules says otherwise. However, if the court assesses and fixes the costs then it is subject to the payment of allocatur fees. My reasons, *inter alia,* are as follows:
>
> (a) The object of awarding costs to the litigant is to indemnify him for the expenses he had incurred in successfully establishing his legal rights. Order 59 of the Rules of the High Court 1980 provides that costs of incidental proceedings in an action shall be in the discretion of the court. The court shall have full power to determine by whom and to what extent the costs are to be paid. The discretion of the court is very wide, but it has to be exercised judicially and on established principles. Costs awarded by court is subject to allocatur if the court has assessed costs and the allocatur fees stands as a form of revenue for the government.
>
> (b) *Taxation, in the context of order 59 means – assessment of costs. Whether costs, is assessed by the judge or Registrar makes no difference except as to the procedure and methodology. When costs are assessed before the Registrar the*

formalities under Order 59 must be satisfied and the Registrar is obliged to look into, inter alia, the relevant items in Appendix 1 to assist in the assessment process. When a judge assesses costs, ie, attempts to fix costs, the formalities stated in Order 59 need not be complied with though the judge is obliged to consider all issues relating to Appendix 1 to assess costs. This means that the judge has to consider all items of taxation inclusive of getting up fees and other relevant provisions relating to taxation as set out in Order 59 of RHC 1980.

(c) *By reading the provisions of Court of Judicature Act 1964 and the Rules of Court it is clear that the registrar cannot have more powers than the judge and the Registrar is merely delegated in a limited sense to exercise the powers of the judge as provided by law, subject to the proviso all decision of the Registrar is subject to appeal.* I have dealt with this area of jurisprudence in *Re Teoh Heng Han; Ex Parte OCBC Bank (Malaysia) Berhad* [2010] 9 CLJ 328. I do not wish to repeat the same.

(d) When the judge attempts to assess and fix costs he would have to consider all the relevant matters which need to be considered relating to taxation in relation to Appendix 1 of Order 59 of RHC 1980 *etc*. The judge cannot simply pluck a figure to determine costs. It is also the duty of the counsels to bring to the attention of the court, the fair amount in relation to costs taking into consideration Appendix 1 of Order 59 of RHC 1980, before the court fixes the costs. Failure of the counsels to submit on costs does not prohibit the court from fixing the costs. (See Order 59 Rule 9(4) of RHC 1980).

(e) *When the matter is referred to taxation the Registrar is only exercising the powers vested in the judge and it cannot be said otherwise taking into consideration the various provisions in the CJA 1964 and the general jurisprudence relating to costs.* This view is further fortified by Order 59 rule 12 which says the Registrar shall have power to tax.

(f) If the judge has already assessed costs the only matter which the Registrar need to do under Order 59 will be that to issue the allocatur, *ie*, the Registrar will add a fee for the purpose of extracting the Registrar's certificate referred to as allocatur, relating to costs. The rules provide that the Registrar will issue the allocatur *ie*, the Registrar's certificate for the amount probably payable to the taxing party with the seal of court. This does not mean where the judge fixes costs he cannot direct the Registrar to issue the allocatur as he has already dealt with all other issues relating to taxation whilst deciding to fix costs. In essence the judge has done what ever need to be done by the Registrar dealing with taxation save as to issue of the Registrar's certificate in relation to allocatur.

(g) The procedure and methodology for taxation and computing allocatur has been captured in the article "*Taxation of Costs*", [1998] 1 MLJ xli; … (emphasis added)

Coincidentally, the article which was referred to by the learned judge in the above excerpt was written by learned counsel who represented the appellant in this appeal.

[23] Upon the respondent's reliance on *Adsigns Imej* (*supra*), it was further argued for the appellant that, under O. 59 of the RC 2012, only the Registrar can issue the certificate on allocatur. The SCJ did not make any order for the Registrar to issue such a certificate. Hence, the SCJ erred when she taxed the bill of costs by way of the OS when it should have been taxed by the Registrar, who would have assessed the allocatur as a revenue to the Government.

[24] My views on this further submission by the appellant are summarised as follows:

(i) the SCJ did not tax the bill of costs by way of the OS in encl. 1 judging from the NoP, in particular on 25 February 2022, clearly the parties were well aware that, after the High Court had dismissed the appellant's appeal against the decision of the SCJ in respect of encl. 1, Suit 103, case managements were held for encl. 25, Suit 103 to be heard *viva voce* as applied for by the respondent, and agreed by the appellant. The appellant himself and Mr Adrian Selvarajoo gave evidence at the hearing for the appellant while Mr Harvinderjit Singh testified for the respondent. Based on the grounds of judgment dated 15 May 2024 ('GoJ'), the SCJ was evidently deciding on encl. 25, Suit 103;

(ii) the respondent had contended that the issue of allocatur was not raised in the MoA. On the other hand, the appellant argued that the words "and therefore it had to go through the process required pursuant to O. 59 of the Rules of Court 2012" in para. 13 of the MoA are wide enough to enable the appellant to rely on all matters set out in O. 59 of the RC 2012 to support its pleaded grounds of appeal. I was prepared to give some latitude in reading para. 13 of the MoA in the manner as advocated by the appellant; and

(iii) I am in agreement with the respondent's submission that a failure or omission to issue an allocatur certificate as provided under O. 59, r. 7(4) of the RC 2012 cannot annul the order made by the SCJ. This court is empowered to order an allocatur certificate to be issued by the Registrar pursuant to O. 59, r. 7(4) of the RC 2012 upon payment of the allocatur fee.

[25] As regards the appellant's contention that the SCJ had taxed the said invoice rather than the bill of costs, the items and costs in the said invoice and the bill of costs are the same. Moreover, at the hearing of the taxation, the appellant did not raise any issue with the bill of costs which was enclosed to the "notis penetapan kos" (encl. 25 in Suit 103). It is rather bewildering

for the appellant to contend that the bill of costs has not been taxed when throughout the hearing, it was clear to the SCJ and the parties that encl. 25 referred to the bill of costs which the Sessions Court had ordered to be taxed.

[26] In the upshot, I find that there is no merit in the appellant's first ground of appeal.

Second Ground: Whether The SCJ Had Erred In Fact And Law In Deciding That, Vide The 27 November 2017 Letter, The Appellant Had Requested For "A Bill Containing Detailed Items" Within The Meaning Of Proviso (a) In Sub-s. 121(1) Of The LPA 1976

[27] Before delving into the second ground of appeal, an examination of the correspondence between the parties at the material time is necessary in order to appreciate the respective arguments of the parties.

[28] On 6 October 2017, the respondent wrote to the appellant noting that the said proceedings have come to an end on the respondent's part and "… we would be most grateful for the early settlement of the sum of RM100,000 (being our professional fees and disbursements incurred for the matters abovementioned; excluding GST of 6%) for your kind attention and early settlement". An acknowledgement receipt chop in the name of the appellant's law firm, *ie*, Messrs Ramli Yusuff & Co dated 10 October 2017 can be seen on the copy of the respondent's letter.

[29] A letter of reminder for the immediate settlement of RM100,000 was sent to the appellant on 3 January 2018 and there is similarly proof of receipt dated 4 January 2018.

[30] In a letter dated 27 November 2017, Messrs Ramli Yusuff & Co referred to the respondent's letter dated 4 January 2018 and replied as follows:

> …
>
> We have been instructed by our client to place the following on record:
>
> a) The above matter has yet to come to a final determination and the current proceeding are still pending;
>
> b) We believe that the fact that both parties are still negotiating on the settlement of which the outcome has not been finalised is within your knowledge; and
>
> c) Our client would have to wait for the disbursement of the settlement sum that may be agreed between the parties before Dato' Sri is able to settle any reasonable amount that may be payable for all the cost and legal expenses;
>
> Be that as it may, we have been instructed by our client on strictly without prejudice basis to request from your firm the breakdown of the fees quoted *via* letter dated 04.10.2018 for our client's further consideration.

A We would be much obliged if you could provide the same at your soonest.

Meanwhile, our client reserve all his rights.

The respondent acknowledged receipt of this letter on 11 January 2018.

B **[31]** The respondent gave an immediate reply on 11 January 2018 stating as follows:

1. We refer to the above matter, our letters dated 6.10.2017 and 3.1.2017 and to your letter dated 27.11.2017 which was only received by us by fax on 4.1.2018 (after issuance of our letter dated 3.1.2018).

C 2. Contrary to the contents of your letter, we have discovered that the High Court Suit was withdrawn *vide* Notice of Discontinuance filed on 6.11.2017. Consequently the pending matter at the Federal Court must have been rendered nugatory and/or must have similarly been discontinued. We also enclose herewith a copy of the said Notice of Discontinuance extracted from the Court's records.

D 3. We also note that payment of our fees for work done is not contingent upon receipt of any settlement sum.

4. As you have now requested for us to prepare an itemised detailed bill we shall undertake the same and have it transmitted to you in due course. Kindly note that our previous gross sum bill (for work done at the High Court) is therefore rendered null and void and for no effect.

E

[32] I pause here to note that, in the respondent's written submission dated 17 April 2024 in the Sessions Court, the respondent submitted that the F appellant has received an undisclosed settlement sum from the defendants in Suit 72.

[33] It was not until 16 December 2019 that the respondent wrote back to the appellant with reference to the letter dated 11 January 2018 and enclosing the said invoice as the "itemised detailed bill of RM259,355 for conduct and G work done" for the said proceedings. The respondent demanded for the prompt settlement of the said amount, failing which the respondent will initiate legal proceedings to recover the same.

[34] The crux of the appellant's submissions and my findings and conclusion in respect of each of his submission are as follows:

H

(i) in the GoJ, the SCJ did not consider the issue that, by requesting for a breakdown of the sum of RM100,000 fees in respect of the said proceedings, the respondent had no right to arbitrarily declare that the respondent's bills dated 6 October 2017 and 3 January 2018 were deemed null and void and it was then entitled to issue an itemised bill. This constitutes a grave misdirection by the SCJ which merits appellate intervention.

I

After having scrutinised the written submissions by the parties in the court below, I was unable to find any submission on the issue as asserted by the appellant. In para. 18 of the appellant's written submission dated 17 April 2024 in the court below, the gist of the appellant's submission is stated as:

i. Fi guaman sebanyak RM250,000.00 adalah keterlaluan dan tidak seimbang (excessively exorbitant and wholly disproportionate) dengan kerja-kerja yang dilakukan oleh VLC.

ii. Kos perbelanjaan hangus/sendiri yang dituntut oleh VLC adalah tidak wajar dan gagal dibuktikan sepenuhnya.

With respect, it is inappropriate for the appellant to submit that there is a "grave misdirection" by the SCJ when the matter was not submitted before the SCJ for her consideration in the first place. In fact, in the GoJ, the SCJ addressed the matters which were raised in the written submissions after the hearing and concluded that:

> [35] … bil kos yang telah dikemukakan oleh Plaintif itu adalah munasabah dan wajar sejajar dengan kerumitan kes dan tahap kerja yang telah dilaksanakan.
>
> [36] Kes Sivil tersebut adalah kes yang pertama seumpama itu di Malaysia, melibatkan banyak isu-isu yang rumit yang memerlukan kepakaraan, kemahiran dan tanggungjawab Plaintif dalam melaksanakan kerja guaman, bilangan dan kepentingan dokumen yang disediakan dan disemak bagi Kes Sivil tersebut.
>
> [37] Dengan yang demikian, Mahkamah membenarkan taksiran bil kos sebanyak RM259,355.00 oleh Plaintif.

It is apparent that the issues raised by way of the grounds of appeal in this court were not placed before the SCJ. This explains the absence of any reasoning by the SCJ on such issues;

(ii) the 27 November 2017 letter does not mean that the appellant was disputing the appellant's bill for the sum of RM100,000 and nothing in the 27 November 2017 letter gives cause to the respondent to declare the bill null and void and of no effect and to issue an itemised bill.

Subsection 121(1) of the LPA 1976 provides as follows:

> Where the remuneration of an advocate and solicitor in respect of contentious business done by him is not the subject of an agreement made pursuant to section 116, the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum:
>
> Provided that –

A (a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him in lieu of the cost a bill containing detailed items, and the
B gross sum bill shall thereupon be of no effect;

…

Subsection 121(1) of the LPA 1976 clearly provides that the solicitor's bill of costs may, at the option of the advocate and solicitor, contain
C detailed items or be for a gross sum.

In *Siew Kuen Williams v. Yong Siew In* [1984] 1 CLJ 41; [1984] 2 CLJ (Rep) 450; [1984] 1 MLJ 95, Siti Norma Yaakob J had to deal with the issue on whether an advocate can present an itemised bill in excess of the amount stated in the gross sum bill after a request is made for a bill
D with detailed items. Her Ladyship answered the question in the affirmative as "… by acceding to a client's request to submit an itemised bill in place of the gross sum bill", "the gross sum bill shall thereupon be of no effect". The effect of these quoted words under s. 121(1)(a) of the Act has been tested in the English case *In Re Taxation Of Costs, In*
E *re Solicitors* where the facts are identical. In that case, the client had demanded a detailed bill from her solicitor after the latter had delivered a gross sum bill. On taxation of the detailed bill, the total sum amounted to more than the original gross sum charged by the solicitor. On appeal, the Court of Appeal held that where a client exercises her rights, "she
F must bear the burden imposed on her by the order by paying that amount of the detailed bill which is found on taxation to be correct without taking into account the amount of the gross sum first asked for by the solicitor". Goddard LJ went further by stating "if a solicitor delivers a gross sum bill and his client asks for a detailed bill, the solicitor must withdraw his gross sum bill and is treated as if it has never been
G delivered. The detailed bill becomes the material bill and is subject to taxation. The resulting position seems to me to be just and reasonable. The client who, not being satisfied with the gross sum charged, demands a detailed bill of charges must put up with the consequences, if the amount of the detailed bill turns out to be larger than the gross sum first
H charged. The client should therefore remember the advice given long ago, which is especially true today: 'Agree with thine adversary quickly, whiles thou art in the way with him'".

The respondent's gross bill for the sum of RM100,000 was served on the appellant on 10 October 2017 *vide* the letter dated 6 October 2017. On
I 27 November 2017, which is before the expiration of three months from the date of delivery of the gross bill to the appellant, the appellant

requested for a "break-down of the fees". The appellant contended that the reason as to why he did not make any payment to the respondent is because they were very close friends and this is evidenced by the fact that no warrant to Act or a letter of appointment as solicitors was executed. This is also the reason for the appellant's request for a breakdown of the sum of RM100,000 according to the three different matters in the said proceedings.

In his witness statement for the hearing at the Sessions Court, the appellant stated, among others, that "Plaintif pada mulanya telah menuntut fi guaman sebanyak RM100,000. Saya tidak bersetuju untuk membayar fi guaman berjumlah RM100,000 berdasarkan kandungan surat plaintif bertarikh 6 Oktober 2017 dan 3 Januari 2018. … Saya melalui Tetuan Ramli Yusuff & Co telah membalas surat plaintif dan telah meminta plaintif untuk memperincikan fi guaman yang berjumlah RM100,000 tersebut".

I agree with the respondent's submission that the appellant's contention that the request in the 27 November 2017 letter was not for a detailed bill, but rather for a mere breakdown, is "mere semantics designed to obfuscate". In my opinion, the appellant's request is a request for "a bill containing detailed items" within the meaning of proviso (a) in sub-s. 121(1) of the LPA 1976.

Upon receiving the 27 November 2017 letter on 11 January 2018, the respondent replied to the appellant on the same date to the effect, among others, that the previous gross sum bill for work done at the High Court is rendered null and void. The appellant did not reply to the respondent's letter dated 11 January 2018 to request for clarification, to state his objection or to put across his position on the matter.

Therefore, it is my considered view that proviso (a) in subs. 121(1) of the LPA 1976 applies in full force and, by the appellant's request *vide* the 27 November 2017 letter, the gross bill for the sum of RM100,000 no longer has any effect;

(iii) relying on the excerpt from the book *The Law Of Advocates & Solicitors in Singapore and West Malaysia*, 2nd edn, Butterworths Asia, 1998 by Tan Yock Lin at pp. 677 to 678, "Fees commonly take one of three forms, namely lump sum fees, itemised fees and hourly charging" and "If no express agreement as to renumeration has been agreed upon in the retainer, the solicitor is obliged to deliver a bill of costs and the client is conferred a right to tax it by reference to a taxing master who will scrutinise the items and charges for reasonableness". However, in the instant case, the respondent did not deliver an itemised bill of costs but instead elected, *vide* the letters dated 6 October 2017 and 3 January

2018, to bill a lump sum fee. By not writing to the appellant and putting him on notice that the respondent was retracting the earlier choice of billing, the respondent has failed to give the right to the appellant to oppose the respondent's choice of billing.

The appellant cited the case of *Amsiah Rahim v. Borneo Samudera Sdn Bhd* [2024] 9 CLJ 210 for the proposition that the principle of election applies and the respondent cannot arbitrarily withdraw its elected choice for a lump sum fee without sanction or leave of the court. It was again submitted that the SCJ failed to consider this issue in her GoJ. However, my finding in this regard is the same as in subparagraph (i) above, namely that the matter was not submitted before the SCJ for her consideration at all.

As for the rest of the appellant's contentions, he has not shown any statutory provision or legal requirement that the respondent must:

(a) write to the appellant and put him on notice that the respondent was retracting the gross sum bill and opting for a bill containing detailed items; and

(b) apply for leave of the court before it can retract the choice for a gross sum bill in substitution for a detailed bill; and

(iv) there is no provision in O. 59 of the RC 2012 for the award of costs in the sum of RM10,000 by the SCJ. The said award has enriched the respondent.

I was inclined to accept the respondent's submission that the SCJ is given a wide discretion on the issue of costs. The taxation of encl. 25, Suit 103 was, with the consensus of the parties, by way of a full hearing with a total of three witnesses being called to give evidence on oath. In the circumstances of this case, it was well within the powers of the SCJ to award costs for the taxation proceedings.

[35] In the premises, I similarly rule that there is no merit in the second ground of appeal.

Conclusion

[36] As a natural consequence of the preceding reasonings, the appellant's appeal was dismissed.

[37] The respondent's counsel proposed costs of RM10,000, to which the appellant's counsel responded was a fair sum. Accordingly, the court ordered costs of RM10,000 to be paid by the appellant to the respondent, subject to allocatur.